

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Atty. Docket: LOESSNER=1

In re Application of:)	Conf. No.:
)	
Martin LOESSNER et al)	Office of Petitions
)	
Pat. No.: 7,438,901)	
)	
Issued: October 21, 2008)	Washington, D.C.
)	
For: VIRULENT PHAGES TO ...)	December 24, 2008
)	

DECLARATION OF RANDY MICHAEL DAVIS

Honorable Commissioner for Patents
U.S. Patent and Trademark Office
Randolph Building, Mail Stop Petitions
401 Dulany Street
Alexandria, VA 22314

Sir:

I, the undersigned Randy Michael Davis, hereby
declare and state as follows:

I have been an employee of Browdy and Neimark,
P.L.L.C. (hereinafter Browdy and Neimark), for seven years.

Since the beginning of 2002, I have worked in the
docketing department and have risen to the level of docketing
supervisor.

Browdy and Neimark uses an electronic docketing
system known as IPMaster, provided by Master Data Systems in
Southfield, Michigan.

Among my duties, I enter into the docketing system all documents received from the Patent and Trademark Office that have a deadline for response.

The IPMaster software has a built-in set of rules that allows the automatic generation of deadline dates once I insert the nature of the paper received and the date of receipt. Thus, for the vast majority of date calculations, no manual calculation need be made as the deadline dates are generated by the system.

Sometime in October of 2008, I was informed of a court decision that required the Patent and Trademark Office to change the way that it calculates patent term adjustment.

I was informed that I should identify every newly issued patent that had a filing date or 371(c) date more than three years prior to the date of issue or the date of first filing of a request for continued examination (RCE).

I worked with Mr. Roger L. Browdy, one of the partners at Browdy and Neimark, until I understood exactly how to identify any such cases.

I was instructed that for each case so identified, I should manually docket the deadline date for filing a request for reconsideration of the patent term adjustment determination for two months after the date of issue of the patent. I was to then give the file to the appropriate

individual for sending a letter to the client, informing it of the possible additional patent term that could be requested in light of the court decision.

Since then I have been manually entering this deadline date for filing a request for reconsideration two months after the date of issue of the patent.

Also among my duties is the review of all correspondence coming into Browdy and Neimark, so as to mark the docketing system when instructions are received and to mark on the communication the deadline date that had been docketed.

The file of the above-identified patent, no. 7,438,901, has today been brought to my attention. It was pointed out to me that the email of instructions from the client, which was received on December 2, 2008, had been erroneously marked by me as having a deadline of January 21, 2009. A copy of this email with my handwritten markings thereon is submitted herewith as Exhibit A.

I then checked the electronic docketing record and found that this case had been manually docketed by me for a deadline of January 21, 2009, for filing the patent term adjustment. A copy of the IPMaster record of docketed action dates, showing the docketed date of January 21, 2009, for

filing the request for reconsideration is submitted herewith as Exhibit B.

I now see that this was an inadvertant error on my part in calculating three months rather than two months from the date of issue.

I have now run a report for all of the patents issued since September 30, 2008, to see if a similar error was made with respect to any of the other patents that had been flagged as being possibly relevant with respect to the Court decision. A copy of this report is submitted herewith as Exhibit C.

I found that every other case that was so docketed was correctly docketed for a two month deadline (except for one that had a typographical error of February 19 instead of February 18, which error has now been corrected.

Thus, the error in this case was an anomaly for which I hold great regret.

I also noted that the email of instructions of December 2, 2008, had been marked by me as being due on January 21, 2009. It is apparent that I took this date from the computer record rather than calculating it anew.

I am now taking steps to ensure that the automatic deadline generation capability of IPMaster is modified so that the date will come up automatically and avoid the necessity of

manual calculations that led to the present error. Once this automatic rule is installed in IPMaster, manual calculation errors as occurred in this case will no longer occur in these situations. This rule change to allow automatic calculation was not done earlier as this is a relatively new procedure and I had not had previously had the opportunity to do what is necessary in order to create such a new rule within IPMaster.

I hereby further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

24DE2008

Date

/Randy M. Davis/

Randy Michael Davis